4098.

SUPREME COURT OF THE UNITED STATES.

No. 203.

THE ORIENT MUTUAL INSURANCE COMPANY, PL'FF IN ER.,

vs.

JOHN S. WRIGHT, USE OF MAXWELL, WRIGHT & CO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

INDEX.

	Original.	Print
Record from the superior court of Baltimore city	1	1
Affidavit	2	2
Account	3	2
Warrant	3	2
Attachment	4	3
Summons	6	4
Short note	6	4
Bond to dissolve attachment	7	5
Petition for the removal of the cause to the circ't c't	9	6
Affidavit	11	7
Bond to appear	12	7
Order	13	8
Sheriff's return of the attachment	13	8
Sheriff's return of the summons	25	15
Order to enter to the use of Maxwell, Wright & Co	27	16
Agreement to enter plea of non-ass't to short note	27	16
Admission of the defendant	28	17
Notice to produce papers	28	17
Notice to produce premium note	29	18
Objections to the evidence of Capt. Thomas	30	18
Jury	32	19
Verdict	32	19
Judgment	32	20
Defendant's 1st bill of exceptions	33	20
Policy	34	20
Cross-examination of Mr. Stewart	41	24

	Original.	Print
Letter from the def'd. to C. Morton Stewart, 9 Aug., 1854	41	25
Letter from C. Morton Stewart to the defend't, 29 Aug., 1856	42	25
Letter from the def'd. to C. Morton Stewart, 30 Aug., 1856	43	26
Extract letter from C. Morton Stewart to the defendant, 1st September, 1856	44	26
Extract of a letter from the defendant to C. Morton Stewart, 2d September, 1856	44	27
Extract of a letter from C. Morton Stewart to the defendant, 5 September, 1856	45	27
Letter from the plaintiff to C. Morton Stewart, 5 September, 1856	45	27
Letter from the plaintiff to C. Oliver O'Donnell, 3d September, 1856.	46	27
Extract of a letter from the defendant to C. Morton Stewart, 6th September, 1856	47	28
Extract of a letter from C. Morton Stewart to the defendant, 8 th Sept., 1856	47	28
Extract of a letter from C. Morton Stewart to the defendant, 13 September, 1856	48	28
Extract of a letter from the defendant to C. Morton Stewart, 15 September, 1856	49	29
Extract of a letter from C. Morton Stewart to the defendant, 16 September, 1856	49	29
Plaintiff's prayer	52	31
Defendant's prayer	53	31
Extract of a letter from the defendant to C. Morton Stewart, 22d Oct., 1856	54	32
Defendant's 2d exception	55	32
Instructions of the court	55	32
Writ of error	58	33
Citation	59	34
Writ of error bond	60	34
Clerk's certificate	62	35

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-eight—

Present, the honorable William F. Giles, judge of Maryland district; Wm. Meade Addison, esquire, attorney; John W. Watkins, esquire, marshal; Thomas Spicer, clerk.

JOHN S. WRIGHT
vs.
THE ORIENT MUTUAL INSURANCE COMPANY.

Be it remembered that heretofore, to wit, on the third day of September, in the year of our Lord one thousand eight hundred and fifty-seven, William Geo. Brown and Frederick W. Brune, esquires, attorneys for the defendants, filed in the circuit court here the transcript of a record from the superior court of Baltimore city, in the words and of the tenor following, to wit:

Record.

STATE OF MARYLAND,
City of Baltimore, to wit:

At a session of the superior court of Baltimore city, in the fifth judicial circuit of the State of Maryland, begun and held at the court-house, in the said city, on the second Monday in January, being the twelfth day of the same month, in the year of our Lord eighteen hundred and fifty-seven—

Present, the honorable Z. Collins Lee, judge; Samuel S. Gaskins, esquire, sheriff; Edward Dowling, clerk.

Among other were the following proceedings, to wit:

JOHN S. WRIGHT
vs.
THE ORIENT MUTUAL INSURANCE COMPANY.

Be it remembered that heretofore, to wit, on the fifteenth day of April, in the year of our Lord eighteen hundred and fifty-seven, William H. Bayzand, esquire, one of the justices of the peace of the State of Maryland in and for the city of Baltimore, pursuant to the act of Assembly in such case made and provided, sent to the clerk of the superior court of Baltimore city here a certain affidavit made before him, with an account thereto annexed, together with

the warrant of him, the said William H. Bayzand, under his hand [and] seal; which said affidavit, account, and warrant are in the words and of the tenor following, to wit:

Affidavit.

STATE OF MARYLAND,
Baltimore City, to wit:

Be it remembered that on the fifteenth day of April, in the year one thousand eight hundred and fifty-seven, before me, the subscriber, a justice of the peace of the State of Maryland in and for the city of Baltimore, personally appeared John S. Wright, an inhabitant of the United States, and makes oath according to law that the Orient Mutual Insurance Company is justly and bona fide indebted unto him, the said John S. Wright, in the just and full sum of sixteen thousand four hundred and seventy dollars, with interest thereon from the 13th day of December, 1856, over and above all discounts. And, at the same time, the said John S. Wright produced to me the account on and by which the said Orient Mutual Insurance Company is so indebted, which is hereunto annexed. And the said John S. Wright did also make oath that he is credibly informed and verily believes that the said Orient Mutual Insurance Company is not a citizen of the State of Maryland, and doth not reside therein, but the said company is a corporation incorporated by an act of the legislature of New York.

WM. H. BAYZAND, *J. P.*

Baltimore, 15 April, 1857.

Account.

The Orient Mutual Insurance Company to John S. Wright.

The loss on insurance from Rio de Janeiro to New Orleans on the one-half of 1830 bags coffee, per schooner Mary W., valued at $18 per bag, as per their policy, record D, folio 204, their one-half being.....	$16,470
Interest from 13th Dec'r, 1856	

Warrant.

To the clerk of the superior court of Baltimore city, Mr. Dowling:

You are hereby required, on receipt of this warrant, and the above oath and annexed voucher on which the same is granted, to issue an attachment against the land, tenements, goods, chattels, and credits of the said Orient Mutual Insurance Company to answer unto the said John S. Wright the above-mentioned sum of sixteen thousand four hundred and seventy dollars, with interest thereon from the 13th day of December, 1856, current money, and

costs of the attachment, according to the acts of Assembly in such case made and provided; and this warrant shall be your sufficient authority. Given under my hand and seal this fifteenth day of April, in the year eighteen hundred and fifty-seven.

WM. H. BAYZAND, [SEAL.]
Justice of the Peace in and for the City of Baltimore, State of Maryland.

And thereupon, in pursuance of the said warrant and of the act of Assembly aforesaid, the said John S. Wright, by Robert J. Brent and Henry May, esquires, his attorneys, prosecuted and sued forth, out of the superior court of Baltimore city here, the writ of the State of Maryland of attachment in form following, to wit:

Attachment.

The State of Maryland to the sheriff of Baltimore city, greeting:

[SEAL.] Whereas William H. Bayzand, esquire, one of the justices of the peace for Baltimore city, hath this day issued his warrant to the clerk of the superior court of said city, directing him to issue attachment against the lands, tenements, goods, chattels, and credits of the Orient Mutual Insurance Company to answer unto John S. Wright the sum of sixteen thousand four hundred and seventy dollars, with interest thereon from the 13th day of December, 1856. We therefore command you, that you attach the lands, tenements, goods, chattels, and credits of the said Orient Mutual Insurance Company to the value of sixteen thousand four hundred and seventy dollars, with interest as aforesaid, current money, and cost of this attachment, according to the form of the act of Assembly in such case made and provided. And we further command you, that by good and lawful men of your bailiwick, you make known unto the person or persons in whose hands you shall make this attachment, that he, she, or they be and appear before the judge of the superior court of Baltimore city, at the court-house in the same city, on the second Monday of May next, to show cause (if any he, she, or they have) why the lands, tenements, goods, chattels, and credits by you attached by virtue of this writ, in his, her, or their hands, shall not be condemned, and execution thereof had and made to and for the use of the said John S. Wright, as of the lands, tenements, goods, chattels, and credits of the aforesaid Orient Mutual Insurance Company, according to the act of Assembly in such case made and provided, if to him, her, or them it shall seem meet; and how you shall execute this writ, make known to our said judge, at the day and place aforesaid, and have you then and there this writ. Witness the honorable Z. Collins Lee, judge of our said court, the 12th day of January, 1857.

EDW'D DOWLING, *Clk.*

Issued the 15th day of April, 1857.

the warrant of him, the said William H. Bayzand, under his hand [and] seal; which said affidavit, account, and warrant are in the words and of the tenor following, to wit:

Affidavit.

STATE OF MARYLAND,
Baltimore City, to wit:

Be it remembered that on the fifteenth day of April, in the year one thousand eight hundred and fifty-seven, before me, the subscriber, a justice of the peace of the State of Maryland in and for the city of Baltimore, personally appeared John S. Wright, an inhabitant of the United States, and makes oath according to law that the Orient Mutual Insurance Company is justly and bona fide indebted unto him, the said John S. Wright, in the just and full sum of sixteen thousand four hundred and seventy dollars, with interest thereon from the 13th day of December, 1856, over and above all discounts. And, at the same time, the said John S. Wright produced to me the account on and by which the said Orient Mutual Insurance Company is so indebted, which is hereunto annexed. And the said John S. Wright did also make oath that he is credibly informed and verily believes that the said Orient Mutual Insurance Company is not a citizen of the State of Maryland, and doth not reside therein, but the said company is a corporation incorporated by an act of the legislature of New York.

WM. H. BAYZAND, *J. P.*

Baltimore, 15 April, 1857.

Account.

The Orient Mutual Insurance Company to John S. Wright.

The loss on insurance from Rio de Janeiro to New Orleans on the one-half of 1830 bags coffee, per schooner Mary W., valued at $18 per bag, as per their policy, record D, folio 204, their one-half being.....	$16,470
Interest from 13th Dec'r, 1856	

Warrant.

To the clerk of the superior court of Baltimore city, Mr. Dowling:

You are hereby required, on receipt of this warrant, and the above oath and annexed voucher on which the same is granted, to issue an attachment against the land, tenements, goods, chattels, and credits of the said Orient Mutual Insurance Company to answer unto the said John S. Wright the above-mentioned sum of sixteen thousand four hundred and seventy dollars, with interest thereon from the 13th day of December, 1856, current money, and

costs of the attachment, according to the acts of Assembly in such case made and provided; and this warrant shall be your sufficient authority. Given under my hand and seal this fifteenth day of April, in the year eighteen hundred and fifty-seven.

WM. H. BAYZAND, [SEAL.]
Justice of the Peace in and for the City of Baltimore, State of Maryland.

And thereupon, in pursuance of the said warrant and of the act of Assembly aforesaid, the said John S. Wright, by Robert J. Brent and Henry May, esquires, his attorneys, prosecuted and sued forth, out of the superior court of Baltimore city here, the writ of the State of Maryland of attachment in form following, to wit:

Attachment.

The State of Maryland to the sheriff of Baltimore city, greeting:

[SEAL.] Whereas William H. Bayzand, esquire, one of the justices of the peace for Baltimore city, hath this day issued his warrant to the clerk of the superior court of said city, directing him to issue attachment against the lands, tenements, goods, chattels, and credits of the Orient Mutual Insurance Company to answer unto John S. Wright the sum of sixteen thousand four hundred and seventy dollars, with interest thereon from the 13th day of December, 1856. We therefore command you, that you attach the lands, tenements, goods, chattels, and credits of the said Orient Mutual Insurance Company to the value of sixteen thousand four hundred and seventy dollars, with interest as aforesaid, current money, and cost of this attachment, according to the form of the act of Assembly in such case made and provided. And we further command you, that by good and lawful men of your bailiwick, you make known unto the person or persons in whose hands you shall make this attachment, that he, she, or they be and appear before the judge of the superior court of Baltimore city, at the court-house in the same city, on the second Monday of May next, to show cause (if any he, she, or they have) why the lands, tenements, goods, chattels, and credits by you attached by virtue of this writ, in his, her, or their hands, shall not be condemned, and execution thereof had and made to and for the use of the said John S. Wright, as of the lands, tenements, goods, chattels, and credits of the aforesaid Orient Mutual Insurance Company, according to the act of Assembly in such case made and provided, if to him, her, or them it shall seem meet; and how you shall execute this writ, make known to our said judge, at the day and place aforesaid, and have you then and there this writ. Witness the honorable Z. Collins Lee, judge of our said court, the 12th day of January, 1857.

EDW'D DOWLING, *Clk.*

Issued the 15th day of April, 1857.

And the said John S. Wright, by his attorneys aforesaid, at the time of suing forth the aforegoing writ of attachment, prosecuted and sued forth out of the said court the writ of summons of the State of Maryland in form following, to wit:

Summons.

BALTIMORE CITY, *to wit:*

The State of Maryland to the sheriff of Baltimore city, greeting:

[SEAL.] You are hereby commanded to summon Orient Mutual Insurance Company of Baltimore to appear before the superior court of Baltimore city, to be held at the court-house in the same city, on the second Monday in May next, to answer an action at the suit of John S. Wright, and have you then and there this writ. Witness, the honorable Z. Collins Lee, judge of the said court, the 12th day of January, 1857.

EDW'D DOWLING, *Clk.*

Issued the 25th day of April, 1857.

And thereupon the said John S. Wright, by his attorneys aforesaid, filed in court here in said cause the following short note, to wit:

Short Note.

IN THE SUPERIOR COURT OF BALTIMORE CITY.

JOHN S. WRIGHT
vs.
THE ORIENT MUTUAL INSURANCE COMPANY. } Action on the case.

This suit is instituted to recover the sum of sixteen thousand four hundred and seventy dollars, with legal interest thereon from the 13th December, 1856, due and owing from the defendant to the plaintiff, for one-half of the loss sustained by the plaintiff on 1830 bags of coffee insured by the defendant against loss, according to the terms of a policy of insurance made by the defendant with the plaintiff.

R. J. BRENT,
H. MAY,
For Pltff.

A copy of which said short note was made and sent, with the writs aforesaid, to the sheriff of the city aforesaid, thereon endorsed: "to be set up at the court-house door."

Afterwards, to wit, on the twenty-seventh day of April, in the year aforesaid, the Orient Mutual Insurance Company, the defendants aforesaid, appeared in court here by George William Brown and Frederick W. Brune, esqrs., their attorneys, and pray the court here that they may be admitted to appear to the original

action, according to the act of Assembly aforesaid, which is by the court here granted upon their filing in the said cause the following bond to dissolve the said attachment, to wit:

Bond to dissolve the Attachment.

Know all men by these presents, that we, John Stewart and Charles Morton Stewart, of the city of Baltimore, and State of Maryland, are held and firmly bound unto John S. Wright, of said city, in the full and just sum of thirty-four thousand dollars to be paid to the said John S. Wright, his attorneys or assigns, to the payment of which we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-seventh day of April, 1857.

Whereas the said John S. Wright heretofore, to wit, on the fifteenth day of April, 1857, sued out of the superior court of Baltimore city a writ of attachment on warrant against the Orient Mutual Insurance Company to recover the sum of sixteen thousand four hundred and seventy dollars, with interest from 13th of December, 1856, which attachment the said Orient Insurance Company wishes to have dissolved:

Now, the condition of the above obligation is such, that if the said Orient Mutual Insurance Company do and shall pay and satisfy any judgment that shall be recovered in such case against said company, then the above obligation to be void, otherwise to be and remain in full force and virtue in law.

JOHN STEWART, [SEAL.]
C. MORTON STEWART, [SEAL.]

Signed, sealed, and delivered in the presence of—
F. A. PREVOST.

On the back thereof, there are the following endorsements, to wit:
"I believe the within bond sufficient. E. Dowling, clk."
"Bond approved April 27, 1857. Z. Collins Lee."

And thereupon the said attachment is by the court here dissolved, and the said defendants, by George William Brown and Frederick W. Brune, esquires, their attorneys, appear to the original action aforesaid, and file in said cause the following order, to wit:

IN THE SUPERIOR COURT OF BALTIMORE CITY.

JOHN S. WRIGHT
against
THE ORIENT MUTUAL INSURANCE COMPANY.
} Originals to May term, 1857.

Brown & Brune, attorneys for the Orient Mutual Insurance Company, appear for them.

BROWN & BRUNE.

Baltimore, April 27th, 1857.

And on the same twenty-seventh day of April, to wit, at the time of entering the appearance of the said defendants to the original action as aforesaid, the said defendants, by their attorneys aforesaid, filed in the said cause the following petition, affidavit, and bond, for the removal of said cause, to wit:

Petition for the removal of the cause to the Circuit Court.

IN THE SUPERIOR COURT OF BALTIMORE CITY.

JOHN S. WRIGHT
vs.
THE ORIENT MUTUAL INSURANCE COMPANY.

To the Hon. Z. Collins Lee, judge of said court:

The petition of the above defendant respectfully shows that a suit has been commenced in your honorable court by John S. Wright, a citizen and inhabitant of the State of Maryland. That your petitioner, the defendant, against whom said suit is brought, is a corporation engaged in marine insurance duly created under an act of the Legislature of the State of New York, and doing business in, and a citizen of the State of New York, where its principal office for transacting business is situated.

That said suit is brought for a claim under a policy of insurance issued to said plaintiff by the defendant, and that said claim, and the matter in dispute between them, exceeds the sum of five hundred dollars, exclusive of costs, and amounts to the sum of $16,470 as stated and set forth in the writ of attachment issued in said suit. That proceedings have been had in said suit, whereby the plaintiff has attached the goods, chattels, and credits of your petitioner, in the hands of various citizens and inhabitants of the State of Maryland, to a very large amount. Your petitioner is desirous to remove the cause for trial into the next circuit court of the United States, to be held in and for the district of Maryland, in the fourth circuit, under the provisions of the 12th section of the act of the Congress of the United States, entitled "An act to establish the judicial courts of the United States," and is ready and willing, and hereby offers good and sufficient surety for its entering in such court, on the first day of its session, copies of said process against them, and also for their appearance there, and entering special bail in the cause, if special bail were originally requisite thereon, and for doing all other acts and things on its part required to be done under the act last-above referred to; and for the purpose of said removal and appearance, and to dissolve the attachment issued as aforesaid, the defendant herewith files and offers a bond, in the sum of thirty-four thousand dollars, with security, to satisfy any

judgment which shall be recovered in this case against it, the said defendant.

Your petitioner further states that no steps or proceedings have been taken by it in said cause, but that, at the time of filing this its petition, the defendant has caused its appearance to be entered in this court, under the provisions of said act of Congress, for the purpose of effecting such removal of said cause.

Your petitioner therefore prays that said cause may be removed for trial from this honorable court into the next circuit court of the United States, to be held in the city of Baltimore, in and for the district of Maryland, in the fourth circuit, according to the act of Congress in such case made and provided.

BROWN & BRUNE,
For Petitioners.

Affidavit.

SUPERIOR COURT OF BALTIMORE CITY.

JOHN S. WRIGHT
vs.
THE ORIENT MUTUAL INSURANCE COMPANY.

STATE OF MARYLAND,
Baltimore City, ss:

Personally appeared in open court, this 27th day of April, 1857, Alexander Hamilton, jr., and made oath that the defendants in the above case are a corporation duly created under an act of the Legislature of the State of New York, and a citizen of said State of New York.

Sworn to April 27th, 1857, before—

Z. COLLINS LEE,
Judge of the Superior Court of Baltimore City.

Bond.

Know all men by these presents, that we, John Stewart and Charles Morton Stewart, of the city of Baltimore, are held and firmly bound unto John S. Wright, of said city, in the sum of thirty-four thousand dollars, to be paid unto the said Wright, his executors, administrators, and assigns, to which payment we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals this 27th day of April, eighteen hundred and fifty-seven.

Whereas the said Wright has sued out a writ of attachment from the superior court of Baltimore city against the Orient Mutual Insurance Company, which is a corporation duly created under an

act of the State of New York, doing business therein, and a citizen of said State of New York, and which, having dissolved the said attachment by filing a bond under the laws of the State of Maryland, have, at the same time of entering their appearance, filed their petition to remove the said proceedings for trial to the circuit court of the United States for the Maryland district, under the act of Congress in such case made and provided:

Now, the condition of the above obligation is such, that if the said Orient Mutual Insurance Company shall enter in the said circuit court for the said district, on the first day of its session, at the November term, eighteen hundred and fifty-seven, copies of said process against them, and shall then and there appear to the same, then the said obligation shall be void, otherwise to remain in full force and effect.

JOHN STEWART, [SEAL.]
C. MORTON STEWART, [SEAL.]

Signed, sealed, and delivered in the presence of—
F A. PREVOST.

Whereupon the court here made the following endorsement on the said aforegoing bond for the removal of the canse as aforesaid, to wit:

Bond approved April 27th, 1857.

Z. COLLINS LEE.

And thereupon passed the following order, to wit:

Order.

JOHN S. WRIGHT
vs.
THE ORIENT MUTUAL INSURANCE COMPANY.

The defendant in this cause having appeared and filed its petition to remove the cause into the circuit court of the United States. and the bond with sureties filed by it having been approved, this court will proceed no further in the cause.

Z. COLLINS LEE.

April 27th, 1857.

Sheriff's Return.

And thereupon, the sheriff of the city aforesaid, to whom the writ first aforesaid was in form aforesaid directed, made return thereof to the court here, thus endorsed, to wit:

"Laid in the hands of the Union Bank of Maryland, by service on Robert Mickle, cashier of said bank, on the 15th day of April,

1857, at 25 minutes 1 o'clock p. m., in the presence of John T. Dancker and Columbus W. Windsor. Also, laid in the hands of the Merchants' Bank of Baltimore, by service on Daniel Sprigg, cashier of said bank, on the 15th day of April, 1857, at 2 o'clock p. m., in the presence of John T. Daneker and Columbus W. Windsor.

Also, laid in the hands of Charles Morton Stewart, as agent of the Orient Mutual Insurance Company, in the city of Baltimore, on the 15th day of April, 1857, at half-past four o'clock p. m., in the presence of Columbus W. Winsdor and George W. Peacock.

Also, laid in the hands Thomas W. Levering, Samuel S. Levering, and Peter R. Levering, co-partners, trading under the name and style of Thomas Levering & Sons, by service on Samuel S. Levering, on the 16th day of April, 1857, at 15 minutes past 2 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Thomas Pierce, on the 16th day of April, 1857, at 20 minutes past 2 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Thomas R. Matthews, senior, and Thomas R. Matthews, junior, co-partners, trading under the name and style of Thomas R. Matthews & Son, by service on Thomas R. Matthews, senior, on the 16th day of April, 1857, at half-past 2 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Samuel Hurlbut, on the 16th day of April, 1857, at half-past 2 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Thomas Whitridge and Horatio Whitridge, co-partners, trading under the name and style of Thomas Whitridge & Co., on the 16th day of April, 1857, at ¼ before 3 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Jewart Parkhurst, junior, George W. Parkhurst, and John W. S. Bradly, co-partners, trading under the name and style of J. Parkh. jr. & Co., by service on George T. Parkhurst, on the 16th day of April, 1857, at 10 minutes before 3 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of George W. Wait and William C. Wait, co-partners, trading under the name and style of George W. Wait & Son, by service on William C. Wait, on the 16th day of April, 1857, at 3 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Thomas Hooper, on the 16th day of April, 1857, at 10 minutes past 3 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Frederick W. Brune, John C. Brune, and William H. Brune, co-partners, trading under the name and style of F. W. Brune & Sons, by service on William H. Brune, on the 16th day of April, 1857, at 20 minutes past 3 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Alexander Kirkland, Daniel Chase, Allen A. Chapman, and Robert R. Kirkland, co-partners, trading under the name and style of Kirkland, Chase & Co., by service on Allen A. Chapman, on the 16th day of April, 1857, at 25 minutes past 3 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Charles Pendergast, on the 16th day day of April, 1857, at ½ past 3 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Lambert Gittings, on the 16th day of April, 1857, at 20 minutes before 4 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of James Corner, Baptist M. Corner, and George W. Corner, co-parners, trading under the name and style of James Corner & Sons, by service on George W. Corner, on the 16th day of April, 1857, at 10 minutes before 4 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Thomas J. Hand, Joseph Myrick, and William H. Browne, co-partners, trading under the name and style of Thomas J. Hand & Co., by service on Thomas J. Hand, on the 16th day of April, 1857, at 4 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Joseph Crosby and John Bevan, co-partners, trading under the name and style of Joseph Crosby & Son, by service on Joseph Crosby, on the 17th day of April, 1857, at 10 minutes before 1 o'clock p. m., in the presence of Columbus Windsor and George W. Peacock.

Also, laid in the hands of Joseph O. Foard and Charles H. Rogers, co-partners, trading under the name and style of Foard & Rogers, by service on Charles H. Rogers, on the 17th day of April, 1857, at 10 minutes before 10 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Samuel Phillips, trading under the name and style of Samuel Phillips & Co., on the 17th day of April, 1857, at 10 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Simon Parkhurst, on the 17th day of April, 1857, at 10 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Alpheus Hyatt and Alexander H. Stump, co-partners, trading under the name and style of Hyatt & Stump, by service on Alpheus Hyatt, on the 17th day of April,

1857, at 5 minutes past 10 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of William H. Crawford, Francis Sanders, and Columbus Crook, co-partners, trading under the name and style of William H. Crawford and Columbus Crook, on the 17th day of April, 1857, at 20 minutes past 10 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Charles F. Pitt, on the 17th day of April, 1857, at 20 minutes past 10 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Samuel Fenby and Richard D. Fenby, co-partners, trading under the name and style of S. Fenby & Brother, by service on Samuel Fenby, on the 17th day of April, 1857, at 25 minutes past 10 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Benjamin A. Franklin, and George Solomon, co-partners, trading under the name and style of B. A. Franklin & Co., by service on Benjamin A. Franklin, on the 17th day of April, 1857, at ½ past 10 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of William W. Spence and Andrew Reid, co-partners, trading under the name and style of Spence & Reid, by service on William W. Spence, on the 17th day of April, 1857, at 15 minutes past 11 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of James F. Pendergast, on the 17th day of April, 1857, at 11 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Charles M. Jackson, on the 17th day of April, 1857, at 11 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of William Stirling and Adolph Ahrens, co-partners, trading under the name and style of Stirling & Ahrens, by service on William Stirling, on the 17th day of April, 1857, at 11 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of William Applegarth, on the 17th day of April, 1857, at ½ half past 11 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of William P. Lemmon and Robert Lemmon, co-partners, trading under the name and style of William P. Lemmon & Son, by service on William P. Lemmon, on the 17th day of April, 1857, at ½ past 11 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Charles R. Pearce, on the 17th day of April, 1857, at ½ past 11 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of the Mechanics' Bank of Baltimore, by

service on Charles R. Coleman, cashier of said bank, on the 17th day of April, 1857, at 20 minutes before 2 o'clock p. m., in the presence of John T. Daneker and George W. Peacock.

Also, laid in the hands of the Baltimore Steam Packet Company, by service on Moore N. Falls, president of said company, on the 17th day of April, 1857, at 10 minutes past 4 o'clock p. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Charles D. Deford and William Y. Deford, co-partners, trading under the name and style of Charles D. Deford & Co., by service on Charles D. Deford, on the 20th day of April, 1857, at ¼ past 9 o'clock a. m., in the presence of George W. Peacock and Lemuel R. Woolen.

Also, laid in the hands of William H. Perole, on the 20th day of April, 1857, at 35 minutes past 9 o'clock a. m., in the presence of George W. Peacock and Lemuel R. Woolen.

Also, laid in the hands of John E. Hooper, doing business under the name and style of James Hooper & Company, on the 20th day of April, 1857, at 15 minutes before 10 o'clock a. m., in the presence of George W. Peacock and Lemuel R. Woolen.

Also, laid in the hands of James J. Fisher, Richard D. Fisher, and Robert A. Fisher, co-partners, trading under the name and style of James J. Fisher & Sons, on the 20th day of April, 1857, at 10 minutes before 10 o'clock a. m., in the presence of George W. Peacock and Lemuel R. Woolen.

Also, laid in the hands of Otho H. Williams, trading under the name and style of William Howell & Sons, on the 20th day of April, 1857, at 10 o'clock a. m., in the presence of George W. Peacock and Lemuel R. Woolen.

Also, laid in the hands of Robert Leslie, trading under the name and style of Robert Leslie & Son, on the 20th day of April, 1857, at 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Thomas Wilson, Robert W. Allen, and William S. Peterkin, co-partners, trading under the name and style of Thomas Wilson & Co., by service on Robert W. Allen, on the 20th day of April, 1857, at 10 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of William T. Hall and Thomas D. Loney, co-partners, trading under the name and style of Hall & Loney, by service on William T. Hall, on the 20th day of April, 1857, at 15 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Henry Whittington and Ichabod B. Eastman, co-partners, trading under the name and style of Whittington & Eastman, on the 20th day of April, 1857, at 20 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of John Williams, John A. Hodge Werff, and George W. Bee, co-partners, trading under the name and style of John Williams & Son, on the 20th day of April, 1857, at 25 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Nathan Rogers and Charles Butler, co-partners, trading under the name and style of Nathan Rogers & Co., by service on Charles Butler, on the 20th day of April, 1857, at ½ past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of the Cromwell Steamship Company, by service on Amasa C. Hall, agent of said company, on the 20th day of April, 1857, at 20 minutes before 11 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of James Girvin, on the 20th day of April, 1857, at 10 minutes before 11 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Robert C. Wright, on the 20th day of April, 1857, at 11 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Henry R. Wilson, David S. Wilson, Thomas J. Wilson, and James G. Wilson, co-partners, trading under the name and style of William Wilson & Sons, by service on Henry G. Wilson, on the 20th day of April, 1857, at 10 minutes past 11 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Ambrose A. White and Francis W. Elder, co-partners, trading under the name and style of White & Elder, on the 21st day of April, 1857, at 15 minutes past 9 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of James A. Hooper, on the 21st day of April, 1857, at 25 minutes past 9 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of the Merchants' and Miners' Line of Steamships, by service on Henry D. Mears, agent of said company, on the 21st day of April, 1857, at 30 minutes past 9 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of James Hooper, John P. Hooper, and James Hooper, junior, co-partners, trading under the name and style of James Hooper & Sons, on the 21st day of April, 1857, at 25 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Samuel G. Hands and Isaac T. Tuttle, co-partners, trading under the name and style of Samuel G. Hands & Co., by service on Samuel G. Hands, on the 21st day of April, 1857, at 20 minutes before 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of John Egerton, Charles M. Dougherty, Herman Woods, jr., and John L. Weeks, co-partners, trading under the name and style of Egerton, Dougherty & Co., on the 21st day of April, 1857, at 15 minutes before 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Frederick A. Levering and Eugene Levering, on the 21st day of April, 1857, at 5 minutes before 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of James Birckhead and Hugh Birckhead, co-partners, trading under the name and style of Birckhead & Brothers, by service on James Birckhead, on the 21st day of April, 1857, at 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Hugh Jenkins, Hugh Jenkins, junior, and John Stricker Jenkins, co-partners, trading under the name and style of Hugh Jenkins and Company, by service on Hugh Jenkins and Hugh Jenkins, junior, on the 21st day of April, 1857, at 5 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Henry Oelricks and Gustave W. Lurman, co-partners, trading under the name and style of Oelricks & Lurman, on the 21st day of April, 1857, at 20 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of William D. Miller, William E. Mayhew, jr., William Hawkins, and Thomas Goodwin, co-partners, trading under the name and style of William Mayhew & Co., by service on William E. Mayhew, jr., on the 21st day of April, 1857, at 25 minutes after 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Henry Tiffany, Henry G. Rice, and Benjamin M. Makepeace, co-partners, trading under the name and style of Tiffany, Ward and Company, by service on Benjamin M. Makepeace, on the 21st day of April, 1857, at 30 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Samuel G. Wyman, John H. Wyman, George H. Byrd, Thomas M. Tolman, and James H. Martin, co-partners, trading under the name and style of Wyman, Bird & Co., by service on George H. Bird, on the 21st day of April, 1857, at 25 minutes before 11 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Jacob Hugg, on the 23d day of April, 1857, at 15 minutes before 9 o'clock a. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Robert Wier and William Longcope and James G. Ramsay, co-partners, trading under the name and

4103

style of Wier, Longcope & Co., by service on William Longcope, on the 23d day of April, 1857, at 10 minutes before 10 o'clock a. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Robert Tucker and Henry R. Tucker, co-partners, trading under the name and style of R. & H. R. Tucker, by service on Henry R. Tucker, on the 23d day of April, 1857, at 15 minutes before 5 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of the Merchants' and Miners' Transportation Company, by service on Thomas C. Jenkins, president of said company, on the 23d day of April, 1857, at 10 minutes past 5 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of James Cheston and Galloway Cheston, co-partners, trading under the name and style of James Cheston & Son, by service on Galloway Cheston, on the 24th day of April, 1857, at 25 minutes past 11 o'clock a. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of John Henderson and Gustavus Henderson, co-partners, trading under the name and style of John Henderson & Co., by service on Gustavus Henderson, on the 24th day of April, 1857, at half-past 11 o'clock a. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Joseph C. Yates, on the 25th day of April, 1857, at half-past 9 o'clock a. m., in the presence of George W. Peacock and Thomas W. Griffin.

Attachment dissolved by the bond, as per clerk's certificate.

SAMUEL S. GASKINS,
Shff. of Baltimore City.

And the sheriff aforesaid, to whom the writ of summons was in form aforesaid directed, and to whom the copy of the said short note was in manner aforesaid sent, makes return thereof to the court here of the last-mentioned writ thus endorsed, to wit: "Non sunt. Copy set up. Sam'l S. Gaskins, shff."

Whereupon the above cause, and all the proceedings therein, in pursuance of the order aforesaid, are hereby removed into the said circuit court of the United States as prayed.

Test: EDW'D DOWLING, *Clerk.*

In testimony that the aforegoing is a full and true transcript from the record of proceedings of the superior court of Baltimore city, in the cause above mentioned, I hereto set my hand, and affix the seal of the said court, this twentieth day of August, in the year of our Lord eighteen hundred and fifty-seven.

[SEAL.]

EDWARD DOWLING,
Clerk of Superior Court of Baltimore City.

Plaintiff's costs, $63 34$\frac{2}{3}$.
Defendants' costs, $14 33$\frac{1}{3}$.

And now here, at this term, to wit, the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-seven, come into the circuit court here, the said John S. Wright, by Robert J. Brent and Henry May, his attorneys, and the said Orient Mutual Insurance Company, by George William Brown and Frederick W. Brune, its said attorneys.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is continued until the first Monday in April next.

Afterwards, to wit, on the second day of December, in the year of our Lord one thousand eight hundred and fifty-seven, the said John S. Wright, by his attorneys aforesaid, filed in the circuit court here an order in the words and of the tenor following, to wit:

Order to enter to the use of Maxwell, Wright & Co.

UNITED STATES CIRCUIT COURT,
For the District of Maryland.

JOHN S. WRIGHT
vs.
THE ORIENT MUTUAL INSURANCE COMPANY.

Mr. SPICER: Enter the above case to the use of Maxwell, Wright & Co.

Dec. 2d, 1857.

JOHN S. WRIGHT, [SEAL.]

Witnessed by R. J. BRENT.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-seven, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

And the parties aforesaid, by their attorneys aforesaid, filed in the circuit court here an agreement in the words and *and* the tenor following, to wit:

Agreement to enter plea of non asst. to the short note.

JOHN S. WRIGHT
vs.
THE ORIENT MUTUAL INSURANCE COMPANY.

It is agreed in the above case that the short note filed among the proceedings shall be taken as a non filed since the dissolution of the attachment; that the plea of non assumpsit shall be taken as if filed to said non, with leave to each party to give the special matter in evidence the same as if duly pleaded, and that all errors in pleading are mutually released.

R. J. BRENT, *for Pltff.*
BROWN & BRUNE, *for Defendt.*

And the defendant, by its attorneys aforesaid, filed in the circuit court here an admission, in the words and of the tenor following, to wit:

Admission.

IN CIRCUIT COURT,
U. S. Md. Dist.

JOHN S. WRIGHT
vs.
THE ORIENT MUTUAL INSURANCE COMPANY.

It is admitted that the defendants are duly incorporated for the transaction of business in insurance in the State of New York.

(Signed) BROWN & BRUNE,
For Defendts.

And the said John S. Wright, by his attorneys aforesaid, filed in the circuit court here a notice to the defendants, in the words and of the tenor following, to wit:

Notice to produce papers.

IN THE UNITED STATES CIRCUIT COURT,
For the District of Maryland.

JOHN S. WRIGHT
vs.
THE ORIENT MUTUAL INSURANCE COMPANY.

To the above-named defendants:

Take notice that at the trial of the above cause, which is fixed for trial on Thursday, the fifteenth instant, you will be required to produce all letters to you from the plaintiff, John S. Wright, and also, all letters written by you to C. Morton Stewart, agent, touching or concerning the making and effecting of the policy of insurance now in suit, or touching or concerning the plaintiff's loss as claimed by him in this suit.

ROB. J. BRENT,
For Plt'ff.

Baltimore, 12th April, 1858.

Service of copy admitted.

BROWN & BRUNE,
For Defend't.

And the said John S. Wright, by his attorneys aforesaid, filed in the circuit court here a notice to the said defendant, in the words and of the tenor following, to wit:

Notice.

IN THE UNITED STATES CIRCUIT COURT,
For the District of Maryland.

14th April, 1858.

JOHN S. WRIGHT
vs.
THE ORIENT MUTUAL INSURANCE COMPANY.

To the above-named defendant:

Take notice, that at the trial, you will be required to produce the premium note given by John S. Wright to you, and which note is now over due, and has never been presented for payment.

ROB. J. BRENT,
For Pl'ff.

Service of copy acknowledged 14th April, 1858.
BROWN & BRUNE.

And the said defendant, by his attorneys aforesaid, filed in the circuit court here its objections to the reading of the deposition of Consider Thomas, in the words and of its tenor following to wit:

Objections to the Deposition of Consider Thomas.

IN THE CIRCUIT COURT OF THE UNITED STATES,
Maryland District.

JOHN S. WRIGHT
vs.
THE ORIENT MUTUAL INSURANCE COMPANY.

To the honorable William F. Giles, judge of said court:

The said defendant says that it had no actual notice that the deposition of Consider Thomas had been taken in this case, until a short time before the April term of this court, and had thus no opportunity to cross-examine said witness, which it desires to do. The defendant therefore objects to the reading of said depositions, for the following reasons:

1. Because the certificate of William Rice, styling himself the Mayor of Bath, is not verified by the corporate seal of said city, nor does it sufficiently appear that said Rice was the mayor of said city.

2. If said Rice is to be regarded as said mayor, the defendant further contends that it is apparent, from said deposition and certificate, that the whole of the same are in the handwriting of the

plaintiff's counsel, except the answers to the interrogatories, and the signatures of the witness and the magistrate, and that this is contrary to the act of Congress.

3. Because it appears that said deposition was in response to special interrogatories prepared by the plaintiff's counsel, and it does not appear that the witness was carefully examined to tell the whole truth, as required by the act of Congress.

4. Because it is manifest, from the handwriting of the envelope, and the seal (F. D. S.,) that the said deposition was sealed up, and directed by the plaintiff, and therefore was not retained by the magistrate, and sealed up, and directed by him to the court, so as to remain under his seal until opened in court, as required by said act.

5. Because the deposition is not entitled as made in this cause.

6. Because it does not appear, from the deposition or the certificate, that the witness made said deposition in reference to any cause, much less that he made it in this cause, or to be used in the same; and although from the certificate it appears that the magistrate, at the time he signed the same, knew that the deposition was to be used in this cause; yet it does not anywhere appear that the magistrate informed the witness, or the witness knew before or at the time of his deposition, or subsequently, for what purpose his deposition was taken.

7. For other reasons patent upon said deposition and certificate.

Whereupon, for trying the issue aforesaid, it is ordered by the court here that twenty persons from the panel of petit jurors returned to the court here, by the marshal of the Maryland district aforesaid, be drawn by ballot; and thereupon the twenty persons being so drawn by ballot and written upon two lists, one of which said lists is delivered to the counsel for the respective parties; and the counsel for each of the said parties having striken out four persons from the said lists, the remaining twelve persons being called, come, to wit:

Jury.

Anthony Miltenberger, William H. Phelps, Joel Blen, Richard Magill, Jacob Green, Edwin M. Shipley, Louis Sholls, Peter J. Adams, William G. Cole, William McKay Keppler, Benjamin Lindsey, Aaron Sparks, who, being empanneled and sworn to say the truth in the premises, upon their oath, do say:

Verdict.

That the Orient Mutual Insurance Company did assume upon itself in manner and form as the aforesaid John S. Wright within against it hath complained, and they assess the damages of the said John S. Wright, sustained by reason of the non-performance of the

promises and assumptions aforesaid, to the sum of seventeen thousand three hundred and sixty-five dollars and thirteen cents, current money.

Judgment.

Therefore, it is considered by the court here that the aforesaid John S. Wright recover against the said Orient Mutual Insurance Company, as well the sum of seventeen thousand three hundred and sixty-five dollars and thirteen cents, current money, his damages aforesaid, by the jurors aforesaid, in form aforesaid assessed, to be sustained by occasion of the non-performance of the promises and assumptions aforesaid, as the sum of , by the court here, unto the said John S. Wright, on his assent adjudged for his costs and charges by him about his suit in this behalf laid out and expended. And the said Orient Mutual Insurance Company, in mercy, &c.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here, the said Orient Mutual Insurance Company tendered to the court here its bill of exception, which were by the court here signed and sealed, and which are in the words following, to wit:

1*st Exception.*

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Maryland District.

JOHN S. WRIGHT, use of MAXWELL, WRIGHT & Co.
vs.
THE ORIENT MUTUAL INSURANCE COMPANY.

At the trial of this cause, the plaintiff, to maintain the issue on his part joined, read in evidence to the jury the policy of insurance of the defendant, dated the 27th of July, 1855.

Policy.

Cargo.

By the Oriental Mutual Insurance Company:

John S. Wright, on account of whom it may concern—Baltimore—loss, if any, to be paid to him, do make insurance, and cause to be insured, lost or not lost, at and from Rio de Janeiro, to a port or ports in the United States, on ¼ of 5,000 bags of coffee, more or

less, each 200 bags in running marks and numbers, or in order of invoice subject to separate average, to add an additional premium if by vessels lower than A 2, or by foreign vessels, return ¼ p. c. if direct to an Atlantic port, upon all kinds of lawful goods and merchandises laden or to be laden on board the good vessel or vessels: beginning the adventure upon the said goods and merchandises from and immediately following the loading thereof vessel at as aforesaid, and so shall continue and endure until the said goods and merchandises shall be safely landed at as aforesaid. And it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accident, without prejudice to this insurance. The said goods and merchandises hereby insured are valued at $18 per bag.

Touching the adventure and perils which the said Oriental Mutual Insurance Company is contented to bear, and take upon itself in this voyage, they are of the seas, men of war, fires, enemies, pirates, rovers, thieves, jettisons, marts, and countermart, surprisals, takings at sea, arrests, restraints, and detriments of all kings, princes, or people, of what nation, condition, or quality soever, barratry of the master or mariners, and all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, or any part thereof. And in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, his servants, factors, and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said goods and merchandises, or any part thereof, without prejudice to this insurance; nor shall the acts of the insured or insurers, in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver, or an acceptance of an abandonment; to the charges whereof, the said insurance company will contribute according to the rate and quantity of the sum herein insured; having been paid the consideration for this insurance, by the assured, or his assigns, at and after the rate of one and one-half per cent., the premiums on risks to be fixed at the time of endorsement; and such clauses to apply as the company may insert, as the risks are successively reported.

And in case of loss, such loss to be paid in thirty days after proof of loss, and proof of interest in the said the amount of the note given for the premium, if unpaid, being first deducted; but no partial loss or particular average shall, in any case, be paid, unless amounting to 5 per cent.

Premium,	$337 50
Policy,	1 25
	$338 75

Provided always, and it is hereby further agreed, that if the said assured shall have made any other assurance upon the premises aforesaid, prior in date of this policy, then the said Orient Mutual Insurance Company shall be answerable only for so much as the

amount of such prior assurance may be deficient towards fully covering the premises hereby assured; and the said Orient Mutual Insurance Company shall return the premium upon so much of the sum by them assured as they shall be by such prior assurance exonerated from. And in case of any insurance upon the said premises subsequent in date to this policy, the said Orient Mutual Insurance shall, nevertheless, be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall be accordingly entitled to retain the premium by them received, in the same manner as if no such subsequent assurance had been made. It is also agreed that the property be warranted by the assured free from any charge, damage, or loss, which may arise in consequence of a seizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband of war.

Memorandum. It is also agreed that bar, bundle, rod, hoop, and sheet iron, wire of all kinds, tin plates, steel, madder, sumac, wicker ware and willow, manufactured or otherwise; salt, grain of all kinds, Indian meal, fruits, (whether preserved or otherwise,) cheese, dry fish, vegetables and roots, rags, hempen yarn, bags, cotton bagging, and other articles used for bags or bagging, pleasure carriages, household furniture, skins and hides, musical instruments, looking-glasses, and all other articles that are perishable in their own nature, are warranted by the assured free from average, unless general; hemp, tobacco stems, matting, and cassia, except in boxes, free from average under twenty per cent., unless general; and sugar, flax, flaxseed, and bread, are warranted by the assured free from average under seven per cent., unless general; and coffee in bags or bulk, pepper in bags or bulk, and rice, free from average under ten per cent., unless general.

Warranted by the assured free from damages or injury, from dampness, change of flavor, or being spotted, discolored, musty or mouldy, except caused by actual contact of sea water with the articles damaged, occasioned by sea perils. In case of partial loss by sea damage to drygoods, cutlery or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise; and the same practico shall obtain as to all other merchandise, as far as practicable. Not liable for leakage on molasses or other liquids, unless occasioned by *by* stranding or collision with another vessel.

If the voyage aforesaid shall have been begun, and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage.

In all cases of return premium in whole or in part, one-half per cent. upon the sum insured is to be retained by the assurers.

On risks by American vessels, warranted not to abandon in case of capture, seizure, or detention, until after condemnation of the property insured, nor until ninety days after notice of said con-

demnation is given to the company. Also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention, or blockade; but in the event of blockade, to be at liberty to proceed to an open port, and there end the voyage.

And on risks by foreign vessels, warranted free from any claim for capture, seizure, detention, or the consequences of any attempt thereat, any stipulation in this policy to the contrary notwithstanding.

In witness whereof, the president or vice-president of the said Orient Mutual Insurance Company hath hereunto subscribed his name, and the sum insured, and caused the same to be attested by their secretary, in New York, the twenty-seventh day of July, one thousand eight hundred and fifty-five.

$22,500. Twenty-two thousand five hundred dollars.

ALFRED OGDEN, *V. President.*

CHARLES IRVING, *Secretary.*

1855, August 13.

Barque Maine Law, from Rio de Janeiro to New Orleans, $15,750, at 1½ p. c.	E.	$236 20
Brig Windward, from Rio de Janeiro to Baltimore, $4,750, at 1¼ p. c.	E.	59 37
November 20. Brig T. Walters, from Rio to Philadelphia, $2,375, at 1¼ p. c.	E.	29 69

And proved that the defendant was a corporation incorporated by the laws of the State of New York, for the purpose of engaging in the business of *of* insurance, and that the said policy was duly signed by the officers of said company, in the city of New York.

And likewise proved that the defendant insured the additional amounts on said policy of $15,000 on the 4th of January, 1856, and of $25,000 on the 19th of April, 1856, as endorsed thereon; and that upon said last-mentioned day the said policy was to *atach* on one-half of each of the plaintiff's shipments covered by said policy.

The plaintiff also proved that upon the 30th day of July, 1855, the defendant agreed with the plaintiff, as follows:

"Inserted with company's sanction, as per their letter of 30th July. C. Morton Stewart, agent."

Which agreement was likewise written on said policy; and that when said last-mentioned agreement was entered on said policy, the words, "not rating lower than A 2," in the body of the policy, were erased.

The plaintiff then further proved that the defendant, through its agent in the city of Baltimore, Mr. Charles Morton Stewart, made *made* the endorsements on said policy, as follows:

1855, August 13.
Barque Maine Law, from Rio de Janeiro to New Orleans, $15,750, at 1½ p. c.....E. $236 25
Brig Windward, from Rio de Janeiro to Baltimore, $4,750, at 1¼ p. c.....E. 59 37
November 20.
Brig T. Walters, from Rio de Janeiro to Philadelphia, $2,375, at 1 p. c.....E. 29 69

The plaintiff also proved that the said Stewart had been for several years the defendants' agent in the city of Baltimore, and that he paid a license in the city of Baltimore as such agent, in conformity with the law of 1846, ch.

That his course of business as such agent is as follows:

He receives in Baltimore applications for insurances by the defendant. The company accepts, rejects, or modifies these applications; if it rejects or modifies them, it communicates with him; if it accepts, the company fills in and forwards to him a policy of insurance, in accordance with the application which he delivers in Baltimore. That he is, and at the date of the policy sued on was, authorized to make risks binding on the company, subject to an answer from the company in due course, and the company is bound until such answer is received; but the premiums he is authorized to charge are to be in conformity with the tariff of the New York underwriters. When applications were or are made to enter risks on running policies, the applications are endorsed at once by him, and the report of such endorsement is transmitted to the company in New York, which names the premium, and that is communicated to the assured. The premiums specified in the body of the running policies are nominal premiums, and the true premiums to be charged are fixed by increasing or reducing the nominal premiums, when the risks are reported. That the notes for the nominal premiums upon these running policies are received by witness and forwarded to the company in New York, which collects them from the assured. The notes given by the plaintiff were made payable at the Union Bank of Baltimore, and were paid at maturity, except the last one for which is now held by the defendant, because it was not presented at the Union Bank, where there were funds of the plaintiff to meet it at maturity. When losses are to be paid to residents of Baltimore, he receives checks on New York, hands them in Baltimore to the parties. The premium notes are not given until the policy is delivered, or extensions are endorsed thereon.

Cross-examination of Mr. Stewart.

On cross-examination, the said witness stated that his authority is contained in the letter of the president to him, dated the 9th of August, 1854.

Letter from the President of the Orient Mutual Insurance Company to C. Morton Stewart, dated 9th August, 1854.

OFFICE OF THE ORIENT MUTUAL INSURANCE COMPANY,
New York, 9th Aug., 1854.

C. MORTON STEWART, ESQ'R,
Baltimore:

DEAR SIR: The ship Vandalia does not rank A 2 G on our books, but she is a very fair vessel of her age and class; we would take the risk on her freight at 3 p. c., to return 1 p. c. if Monte Video only be used, and no loss claimed at that; we authorize you to make it binding at $7,000.

I note the other part of your letter. We should not object to your making risks binding, subject to an answer in course, it being understood that we are bound until you receive such answer. Premiums to be in conformity to the tariff of the N. Y. board of underwriters.

Ten per cent. to be allowed to you for comm'ns, we paying taxes, except $1,000 for license. It will give myself and Mr. Ogden great pleasure to see you about 1st Sept'r.

Yours, respectfully,
C. W. FABER, *Presd't.*

That he had no other authority in writing; and that he had no power whatever to alter any policy transmitted to him for delivery; that he had never done so in any instance. He also proved that the nominal premiums taken on the delivery of a running policy are returned, if no risks are returned, with the exception of ½ per cent. retained as a bonus.

The plaintiff then proved, by Capt'n Consider Thomas and Capt'n Wolfe, the same facts and statements which are contained in the record of the case in this court, of the same plaintiff against the Sun Mutual Insurance Company, and it is agreed that their testimony may be read in the Supreme Court from said record, pp. ( ) as if part of this record, that case and this having in some respects the same testimony, and having been tried together in the court below.

The plaintiff here rested his case, and the defendant then read in evidence the correspondence between the parties.

Letter from C. Morton Stewart to the President of the Orient Mutual Insurance Co., Aug. 29th, 1856.

BALTIMORE, *Aug. 29th*, 1856.

LEOPOLD BIERWIRTH,
President of the Orient Mutual Insurance Co., New York:

DEAR SIR: Enclosed please find various declarations to be en-

tered on open policies. Please name rate per Mary W. The rate, I think, ought not to be less 2½ p. c. Enclosed also please find notes of T. Wilson & Co., and R. C. Wright.

Yours, very truly,
C. MORTON STEWART.

Enclosed.

4 declarations of N. Rogers & Co.
1 " T. Whitridge & Co.
1 " John S. Wright.
2 " Robert C. Wright.

Extract of letter from the defendant to C. Morton Stewart, dated 30th August, 1856.

OFFICE OF THE ORIENT MUTUAL INSURANCE COMPANY,
New York, August 30th, 1856.

C. MORTON STEWART, ESQ.,
Baltimore:

DEAR SIR: In regard to the "Mary W.," we note that we have an open amount for R. C. Wright, by this vessel. We regret your accepting the application of John S. Wright, by her, and if you have not approved and accepted it as the terms of the policy require, we wish you to correct the same. If it turns out that we have to accept it, the rate will probably be more than 2½ p. c. We believe the Sun have an amount by this vessel, and it would be well to ascertain what the views of their agent are.

Extract of a letter from C. Morton Stewart to the President of the Orient Mutual Insurance Company, dated 1st September, 1856.

BALTIMORE, *September 1st*, 1856.

LEOPOLD BIERWIRTH, ESQ.,
President of the Orient Mutual
Insurance Company, New York:

DEAR SIR: "Mr. John S. Wright's policy covering half of his shipment from Rio as soon as shipped, I thought it obligatory on me to enter the risk per 'Mary W.' The discretionary charge of premium rests with you. The 'Sun' name 10 p. c., subject to average, and 2½ p. c. free of average. Captain Wolfe, of the 'Gallego,' gave a certificate as to her standing, and Maxwell, Wright & Co. say that all the captains on the survey said that she was in a fit condition to carry cargo to any portion of the world."

C. MORTON STEWART.

Extract of a letter from the defendant to C. Morton Stewart, dated 2d Sept., 1856.

OFFICE OF THE ORIENT MUTUAL INSURANCE COMPANY,
New York, September 2d, 1856.

C. MORTON STEWART, ESQR.,
Baltimore:

DEAR SIR: "If the risk per 'Mary W.' cannot be cancelled on Mr. John S. Wright's open policy, we shall charge the same rate as the "Sun" does, viz. 10 p. c. subject to average, or 2½ p. c. free of average."

Yours, respectfully,
CHARLES IRVING.

Extract of a letter from C. Morton Stewart to the President of the Orient Mutual Insurance Company, dated 5th September, 1856.

BALTIMORE, *September* 5, 1856.

LEOPOLD BIERWIRTH, ESQ.,
President of the Orient Mutual Insurance Co., New York:

DEAR SIR: "I enclose a letter received from John S. Wright, this morning, in relation to the Mary W."

C. MORTON STEWART,
Per WM. T. THERLIN.

Letter from John S. Wright to C. Morton Stewart, dated Sept. 5, 1856.

BALTIMORE, *Sep'r* 5, 1856.

CH'S MORTON STEWART, ESQ.,
Agent Orient Mutual Insurance Co., Baltimore:

DEAR SIR: The communication from your company was sent to me this morning. I now beg to enclose copy of a letter to agent of Sun M. Ins. Company, and I wish you to consider same as applying in every respect to your company.

Yours, very truly,
JOHN S. WRIGHT.

Letter from John S. Wright to C. Oliver O'Donnell, dated 3d September, 1856.

BALTIMORE, 3*d Sept'r*, 1856.

C. OLIVER O'DONNELL, ESQ.,
Ag't Sun Mutual Insurance Company:

DEAR SIR: I am just in receipt of your letter of yesterday's date. I cannot admit the right of your president to tax me with the enormous rates mentioned by you on the risk per Mary W., as the vessel, in the opinion of competent ship-masters, was in

every way suited for bringing a cargo of coffee with safety; nor would my friends at Rio de Janeiro have shipped coffee for my account by a vessel which, in their judgment, was not fit; therefore should the vessel rate below A 2, your company is only entitled to an equitable rate, and not to the exorbitant rates stated. But I cannot admit that she rated below A 2, and therefore protest against any extra charge, but shall consider the cargo covered under your policy. Under any circumstances, I am willing to pay an equitable rate; but in case of disagreement between Mr. Neilson and myself as to what an equitable rate is, it seems to me a fair question for a reference.

Yours, very truly,
JOHN S. WRIGHT.

Extract of a letter from the Defendant to C. Morton Stewart, dated 6 Sept'r, 1856.

OFFICE OF THE ORIENT MUTUAL INSURANCE COMPANY,
New York, 6th Sept., 1856.

C. MORTON STEWART, ESQ.,
Baltimore:

DEAR SIR: "Your favor of 5th inst. is received, enclosing note of Mr. J. S. Wright, in which he refuses to accept the rate we named for the cargo by the Mary W. It was with very great reluctance we named the rate at the time, and are pleased to learn that our offer has not been accepted, as we are therefore released from so objectionable a risk."

Yours, &c.,
CHARLES IRVING.

Extract of a letter from C. Morton Stewart to the President of the Orient Mutual Insurance Company, dated September 8th, 1856.

BALTIMORE, *September 8th*, 1856.

LEOPOLD BIERWIRTH ESQ.,
President of the Orient Mutual Insurance Co., New York:

DEAR SIR: "I have been with John S. Wright this morning in relation to the Mary W., and will forward you his views in relation to that vessel to-morrow."

Yours, truly,
C. MORTON STEWART.

Extract of a letter from C. Morton Stewart to the President of the Orient Mutual Insurance, dated September 13th, 1856.

BALTIMORE, *Septem. 13th*, 1856.

LEOPOLD BIERWIRTH, ESQ.,
President of the Orient Mutual Insurance Co., New York:

DEAR SIR: "On September 8th, I advised you that I would

forward you the views of Mr. John S. Wright. On that day I forwarded to the 'Sun' (acting for Mr. O'Donnell) the same, and expected that they would have seen you in relation to the matter to-day. Not having received any answer, I telegraphed Mr. Neilson, and received an adverse answer. The amount of the contents of it were, that Mr. Wright objects to the rate of 10 p. c. and 2½ p. c., and maintains his right of being covered under the policies issued by the 'Orient.' He says: That in the absence of any direct proof that the 'Mary W.' stood, at the time of lading in Rio de Janeiro, lower than A 2, the certificate of the captains of the 'Gallego' and 'Souter Johnny' justify him in claiming to be covered at policy rate; and that in case of disagreement between you and himself, a suitable additional is to be determined by the decision of some disinterested party competent to decide in the premises. He proposes the charge of 1½ p. c. against total loss, or the fixing of the rate on cargo, subject to average on series, to be left to some first class company in New Orleans, who shall decide the matter after survey of vessel in New Orleans, of course making due allowance for any damage the vessel may have sustained during the present voyage. Please answer per return mail. Mr. W. H. D. C. Wright, who was at Rio when the 'Mary W.' was there, says, that she had a great deal of money expended on her, and that her bottomry bond was covered there at 2½ p. c."

Very truly, yours,

C. MORTON STEWART.

Extract of a letter from the defendant to C. Morton Stewart, dated 15th Sept., 1856.

OFFICE OF THE ORIENT MUTUAL INSURANCE COMPANY,
New York, Sept. 15, 1856.

C. MORTON STEWART, Esq.,
Baltimore.

DEAR SIR: "In regard to the affair of the 'Mary W.,' we look upon it as closed by Mr. Wright's previous communication, and our letter to you of the 6th inst. We do not, therefore, deem it expedient to re-open the matter, by referring it to arbitration, or further discussion upon the subject."

Very respectfully,

CHARLES IRVING.

Extract of a letter from C. Morton Stewart to the defendant, dated Sept. 16, 1856.

BALTIMORE, *Sept.* 16, 1856.

LEOPOLD BIERWORTH, Esq.,
President of the Orient Mutual Insurance Company, New York.

DEAR SIR: "Mr. Wright, on receipt of your message, said

that he considers himself covered under his policy with you, but that he protests against the charge of 10 p. c. and 2½ p. c."

Yours very truly,

C. MORTON STEWART.

And the defendant likewise proved by the said Stewart that the plaintiff was at once and fully informed in regard to said correspondence, but never assented to the premium charged by the defendant.

The defendant then read in evidence to the jury the depositions of the following witnesses, viz:

Samuel J. Waring,
David Gillespie,
A. C. Marshall,
Alexander B. Clark,
Augustus Proal,
Charles Dennis, and
Elwood Walter.

And it is agreed that the said depositions, and each of them, may be read in the Supreme Court from the record of the case against the Sun Insurance Company, as if inserted in this record.

The plaintiff then proved by Captain Joseph Clackner, (whose testimony was taken, subject to all legal exceptions on the part of the defendant,) that he had been for many years engaged by the insurance companies of Baltimore as an inspector of vessels; that he makes weekly reports to the companies; that he reported the Mary W., which was in Baltimore in 1848 at that time to said companies, as follows: "Schooner Mary W., Cathcart master, built in Bridgeton, N. J., 148 tons, depth 8 feet 6 inches, draught 9 feet, single, full built, centre board, rate A 2." He also proved that centre-board schooners very seldom rate higher than A 2.

On cross-examination, the same witness stated that he did not know how the Mary W. rated in New York; that he did not rate her A 2 for foreign voyages; her rate A 2 was for coasting voyages; that he did not consider her good for a foreign voyage any way. On re-examination by the plaintiff, the same witness stated that he placed her in his report as rating A 2 without the above qualification. That the Baltimore agency of the defendant keeps in their office for use and reference to his said weekly reports.

The plaintiff then also proved (subject to the same exceptions on the part of the defendant) by Captain Coale, that he was a shipmaster in 1835, and has been a marine inspector for four years. That he considers a vessel with her centre-board drawn up, and her well closed over, as a keel vessel, and that if she has a fourteen-inch keel put on, and as much dead rise as the Mary W., as suitable for carrying coffee as any other vessel.

On cross-examination, the same witness stated that he had never carried coffee, and had never seen the Mary W.

The plaintiff then proved that the Mary W. was, in August, 1856, accepted as insurable on a voyage from Rio to New Orleans with a cargo of coffee, and a policy to that effect made by a responsible New York insurance company, but interest did not appear under said policy.

Whereupon the testimony being closed, the plaintiff presented the following prayers:

Pltff.'s Prayers.

1. If the jury believe, from the evidence, that the Mary W., at the time of the shipment of the cargo from Rio Janeiro to New Orleans, as stated, rated and was considered as not under A 2, in port of Rio aforesaid, then the rate of premium is stipulated in the policy, and the only question for the consideration of the jury is in respect to her seaworthiness; provided the jury find that said shipment was reported by the assured in said policy as a risk thereto attaching, and that such report was in fact made before said loss occurred, and that the same was endorsed on said policy with the privity and under the authority of said defendant.

2. If the jury believe, from the evidence, that at the time of the shipment of the cargo on the Mary W. from Rio to New Orleans, the Mary W. did in fact rate under A 2, but was seaworthy at the time of the commencement of said voyage, then, upon the whole evidence in this cause, the rating of said vessel under A 2 is in no-wise material, except with reference to the discount of the amount of the additional premium chargeable to the assured from the amount of loss claimed in this case.

And the defendant the following prayers:

Defendants' Prayers.

1. That the jury, in ascertaining from the evidence in this cause whether the schooner Mary W. was, at the date of the return made by the plaintiff to the agent of the defendant, on the 23d day of August, 1856, rated lower than A 2, are bound to look only to the evidence showing the rating of said schooner in the office of the defendant and of other insurance offices in New York, such being the true interpretation of the policy read in evidence by the plaintiff.

2. That there is no evidence offered in this cause to show that said schooner Mary W. was rated on the 23d day of August, 1856, at a rate as high as A 2 in the office of the defendant, or of other insurance offices in New York.

3. If the jury find, from the evidence, that the schooner Mary W., at the time of the application made by the plaintiff for the endorsement of her cargo upon the policy of insurance offered in evidence on this cause, was rated in the office of the defendant, and of other insurance offices in New York, at less than A 2, and that

being so rated, the defendant offered to make said endorsement so as aforesaid requested, at the rates of insurance stated in the letter offered in evidence from the defendant to C. Oliver O'Donnell, the agent of the said defendant, dated on the 30th of August, 1856, and shall further find that said offer so to insure upon said rates was communicated to the plaintiff, and that said plaintiff thereupon communicated to the defendant the letter offered in evidence, of the 3d of September, 1856, then the plaintiff is not entitled to recover in this suit.

After these prayers were presented to the court, and argued by the respective counsel, the plaintiff offered to read to the jury the letter of the president of the defendant to Mr. Stewart, of the 22d of October, 1856.

Extract of a letter from the defendant to C. Morton Stewart, dated 22d Oct'r, 1856.

OFFICE OF THE ORIENT MUTUAL INSURANCE COMPANY,
New York, October 22d, 1856.

To C. MORTON STEWART, ESQ.,
Baltimore:

DEAR SIR:

P. S.—"Please note that we do not wish to extend or add to the amounts on the open policies of the Messrs. Wright, if we cannot have a clause inserted to the effect, that risks by vessels rating less *rating less* than A 2, on the books of the company, not binding, unless specially agreed upon."

L. B.

The defendant then objected to the admissibility in evidence of said letter, but the court overruled said objection, and permitted said letter to be read in evidence; to which the defendants, by its counsel, excepted, and asks the court to sign and seal this its first exception, which is accordingly done, this twenty-first day of April, A. D. 1858.

WILLIAM F. GILES, [SEAL.]

2d Exception.

The court then rejected all the prayers of the plaintiff and defendant, and upon the testimony contained in the first exception, which is made part of this, granted the following instruction to the jury:

Instruction of the court.

If the jury shall find from the evidence that the defendants executed the policy of the 27th of July, 1855, and received from the plaintiff the premium therein mentioned, and that their duly

4112

authorized agent in this city made the endorsements on the said policy, which have been offered in evidence; and shall further find that 1830 bags of coffee belonging to the plaintiff were shipped on the 12th day of July, 1856, at Rio, on board the schooner Mary W., to be carried to New Orleans, and that, when said schooner left Rio, she was seaworthy, and in good condition; and shall further find that the said vessel and cargo were subsequently on said voyage totally lost by one of the perils insured against, and that said schooner was rated lower in New York, then the plaintiff is entitled to recover for one-half of the value of said coffee so lost, at $18 per bag, less such additional premium beyond the 1½ per cent. as, in the opinion of the underwriters, may be deemed adequate for the increased risk on a cargo of coffee shipped on a vessel rating below A 2, with interest from thirty days after such time as the jury may find the defendants were furnished by the plaintiff with the preliminary proofs of his said loss. And there is no evidence *and there is no evidence* in this case that the said schooner, at any period during the running of this policy, rated as high as A 2 in any of the insurance offices in New York.

To which instruction of the court, and to the rejection of the defendants' three prayers, and each of them, the defendant excepted, and asks the court to sign and seal this its second exception, which is accordingly done, this 21st day of April, A. D. 1858.

WILLIAM F. GILES, [SEAL.]

And now here, at this day, to wit, the twenty-first day of April, in the year of our Lord one thousand eight hundred and fifty-eight, the said Orient Mutual Insurance Company produced to the said circuit court here the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid, of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you, or some of you, between John S. Wright, plaintiff, and the [SEAL.] Orient Mutual Insurance Company, defendant, a manifest error hath happened, to the great damage of the said Orient Mutual Insurance Company, as by its complaint appears: We being willing that error, if any hath been, should be duly cor-

rected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in Washington, on the first Monday in December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-seven.

THO. SPICER, *Clk Circ't Ct.*

Issued 21 April, 1858.

THE UNITED STATES OF AMERICA.

To John S. Wright, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, wherein the Orient Mutual Insurance Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Orient Mutual Insurance Company, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal this 28th day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

WILLIAM F. GILES, [SEAL.]

I acknowledge notice of the above citation.

R. J. BRENT.

In pursuance whereof, and according to the form and effect of the statute in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, together with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

Writ of Error Bond.

Know all men by these presents, that we, C. Morton Stewart and John Stewart, are held and firmly bound unto John S. Wright in the just and full sum of thirty-five thousand dollars, lawful money of the United States, to be paid to the said John S. Wright,

his heirs, executors, administrators, or assigns, to which payment well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas, at a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-eight, the said John S. Wright, by the judgment of the same court, recovered against the Orient Mutual Insurance Company the sum of seventeen thousand three hundred and sixty-five dollars and thirteen cents, together with his costs in that behalf laid out and expended.

And whereas, the said Orient Mutual Insurance Company hath sued out the writ of the United States of America for the correcting of errors, and a citation directed to the said John S. Wright, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, to shew cause, if any there be, why the judgment so as aforesaid rendered, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties aforesaid in this behalf:

Now, the condition of the above obligation is such, that if the said Orient Mutual Insurance Company shall well and truly prosecute with effect its said writ of error, and pay unto the said John S. Wright, his heirs, executors, administrators, or assigns, the damages, costs, and charges aforesaid, adjudged unto him, by the said circuit court, and also such damages, costs, and charges as may be awarded unto him by the said Supreme Court in case the said Orient Mutual Insurance Company shall fail to make good its plea, then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue in law.

C. MORTON STEWART, [SEAL.]
JOHN STEWART, [SEAL.]

Signed, sealed, and delivered in presence of—
As to C. Morton Stewart,
W. CARVEL HALL.
Witness as to John Stewart,
STEWART BROWN.

Bond approved 29th April, 1858.

WILLIAM F. GILES.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name and affix the seal of the said circuit [SEAL.] court, this twenty-fifth day of September, in the year of Lord one thousand eight hundred and fifty-eight.

THO. SPICER, *Cl'k Circ't Ct.*